

FILED
SEP 26 2006
DEPARTMENT OF MANAGED HEALTH CARE
By Susan Ball
Filing Clerk

1 WHEREAS, on November 14, 2005, the Department issued an order providing that the
2 Cease and Desist Order issued on July 15, 2005, was stayed to the extent that it required
3 cessation of Capella's operation of the Care Entrée program or prohibited the acceptance of new
4 members, and further providing that the stay was to remain in effect until after a decision was
5 rendered in these administrative proceedings, or until the Department issued a subsequent Order;

6 WHEREAS, on February 10, 2006, the Department and Capella entered into a joint
7 stipulation which limited the scope of the hearing to the issue of the Department's jurisdiction;
8 that is, whether Capella was acting as a health care service plan under the Knox-Keene Act;

9 WHEREAS, the matter was heard as OAH matter No. N2005100849 before Ann
10 Elizabeth Sarli, Administrative Law Judge in the Office of Administrative Hearings, on February
11 21 and 22, 2006, and March 23, 2006, and her Proposed Decision was issued on June 15, 2006;
12 and

13 WHEREAS, the parties desire to enter into this Consent Agreement and thereby settle
14 and resolve this pending enforcement matter.

15 NOW, THEREFORE, the Department and Capella mutually agree to enter into this
16 Consent Agreement, and further agree as follows:

17 I. Consistent with seeking licensure under the Knox-Keene Act, Capella shall
18 forthwith commence the following activities and complete them in accordance
19 with the timetable set forth herein:

20 A. Submit for the Department's prior review and approval, on or before
21 October 25, 2006:

- 22 1. Any and all advertising and marketing materials currently in use or
23 contemplated to be used in connection with the marketing and sale
24 of discount health cards in California; and
- 25 2. Documents and evidence sufficient to demonstrate that Care
26 Entrée is providing substantial and verifiable discounts to its
27 members for services rendered by dentists, doctors, and hospitals,
28 in conformity with its advertising.

- 1 B. Submit a report to the Department on or before November 8, 2006,
2 sufficient to demonstrate that Care Entrée has:
- 3 1. Ceased using third party administrator or personal escrow accounts
4 in California and returned to enrollees all of the money, estimated
5 to total \$418,000, which was retained in such accounts established
6 by Care Entrée's California members to pay providers for their
7 health care services; and
- 8 2. Made refunds in accordance with the terms of its membership
9 agreement to all enrollees who sought them, providing
10 documentation listing the enrollees, the circumstances of
11 cancellation, and the amounts refunded.
- 12 C. Prepare and file an application for licensure under the Knox-Keene Health
13 Care Service Plan Act of 1975, Health & Safety Code sections 1340 *et*
14 *seq.*, in accordance with the following time frame:
- 15 1. On or before February 15, 2007, schedule an application for
16 licensure pre-filing conference with the Department;
- 17 2. On or before February 28, 2007, file an Electronic
18 Filing Signature Verification contract with the Department;
- 19 3. On or before March 31, 2007, file an application for licensure,
20 which demonstrates compliance with all applicable requirements
21 of the Knox-Keene Act or meets the requisite burden of proof for
22 exemption or waiver pursuant to Health and Safety Code sections
23 1343(b) and 1343.5; and,
- 24 4. Demonstrate efforts, satisfactory to the Department, to resolve all
25 compliance concerns identified by the Department in the license
26 application, and make reasonable progress to the satisfaction of the
27 Department to complete the license application process by
28 December 31, 2007.

- 1 D. Implement the following on or before December 31, 2006, except to the
2 extent exempted or waived pursuant to Health and Safety Code sections
3 1343(b), 1343.5, or otherwise:
- 4 1. Operational changes necessary and sufficient for compliance with
5 the requirements of Health and Safety Code sections 1360, 1360.1,
6 1361, 1365(a), 1365.5, 1366, 1367 (a), (b), (c), (d), (e)(1), (f), (g)
7 and (h)(1); 1368.02(b), 1373(a), 1379, 1381, 1384(a), (d) and (f);
8 1385 and 1395 of the Knox-Keene Act;
 - 9 2. Revisions to Respondent's Member Guide, necessary and
10 sufficient for compliance with the requirements of Health and
11 Safety Code sections 1363 and 1363.1 and California Code of
12 Regulations, title 28, sections 1300.63, 1300.63.1, 1300.63.2 and
13 1300.67.4, as applicable;
 - 14 3. Establish a grievance system in compliance with Health and Safety
15 Code sections 1368 and 1368.01, and California Code of
16 Regulations, title 28, section 1300.68;
 - 17 4. Disclose the grievance process within the Member Guide and on
18 Care Entrée's website; and,
 - 19 5. Submit to the Department the first monthly report of all grievances
20 and complaints by California members, including the reason for
21 each complaint and the disposition of each; continue to submit
22 monthly reports thereafter.
- 23 E. The Department may extend the time during which Capella may do any act
24 specified herein if it is satisfied that Capella is making reasonable progress,
25 but this provision shall not create any expectation that time will be extended;
26 nor shall the fact that the Department extends time once create any
27 expectation that it will do so again.
28

- 1 II. Capella will continue to make refunds in accordance with the terms of its
2 membership agreement to any enrollee who indicates a desire to cancel his or her
3 membership and/or who requests a refund in accordance with the terms of the
4 membership agreement, and will otherwise prospectively allow cancellations
5 without condition, limitation, or reservation other than as provided for in its
6 membership agreement.
- 7 III. Capella may continue to market and sell the Care Entrée product in California, so
8 long as, and only so long as, it is fully in compliance with the terms of this
9 Consent Agreement, including paragraphs I.B.2 and II, requiring refunds to be
10 made to all enrollees who request them in accordance with the terms of their
11 membership agreement.
- 12 IV. This Consent Agreement will be superseded by any regulatory and licensing
13 requirements adopted by the Department concerning discount health plans.
- 14 V. Capella waives any right to appeal, contest, dispute or otherwise challenge in
15 connection with this enforcement matter, be it by administrative, judicial or other
16 proceeding, the Department's jurisdiction over Capella's discount health care
17 program or the issue of whether Capella is acting as a health care service plan
18 within the meaning of the Knox-Keene Act. This Agreement shall be a complete
19 defense to any such appeal, contest, dispute, or challenge, and shall entitle the
20 Department to an immediate dismissal, with prejudice, of any such appeal,
21 contest, dispute, or challenge.

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1 VI. Unless terminated sooner or otherwise ordered, this Consent Agreement shall
2 automatically terminate upon the Department's issuance of a license under the
3 Knox-Keene Act, or any other statute governing discount health care programs,
4 to Capella.

5 Dated:

6 September 26, 2006

DEPARTMENT OF MANAGED HEALTH
CARE

7
8 By:

Amy Dobberteen
Assistant Deputy Director

9
10 Dated:

11 Sept. 25, 2006

THE CAPELLA GROUP, INC., DBA
CARE ENTRÉE

12
13 By:

Eliseo Ruiz III
Vice President and General Counsel